

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

STEVE ZACCONE)
)
Plaintiff)) **No. 10-CV-00033**
v.))
) **Magistrate Judge Cole**
STANDARD INSURANCE COMPANY)
)
Defendant))

**STANDARD INSURANCE COMPANY'S
MOTION FOR ENTRY OF JUDGMENT**

Defendant, STANDARD INSURANCE COMPANY ("Standard"), through its attorney, Warren von Schleicher of Smith von Schleicher & Associates, submits its Motion for Entry of Judgment, pursuant to Fed. R. Civ. P. 52(a) or alternatively under Fed. R. Civ. P. 56(c):

1. Steve Zaccone seeks to recover disability benefits under Tempel Steel's Long Term Disability Insurance Plan. The Plan is established pursuant to a Group Long Term Disability Insurance Policy ("Group Policy") issued by Standard Insurance Company ("Standard") and governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001 *et seq.* ("ERISA").
2. The Group Policy caps benefits at 12 months for disabilities caused or contributed to by "Other Limited Conditions" including arthritis or disorders of the spine and surrounding soft tissue. Zaccone became disabled from working in his Own Occupation on September 1, 2006

due to radiating back pain caused by degenerative disk disease and arthritis, which falls within the Group Policy's coverage for Other Limited Conditions.

3. Zaccione asserts that his back condition fits within a narrow exception to Other Limited Conditions. The Group Policy's exception applies only when definitive findings are documented by specified objective tests, which Zaccione lacks. Excepted from Other Limited Conditions are disabilities caused by "herniated disks with neurological abnormalities that are documented by electromyogram and computer tomography or magnetic resonance imaging," and "radiculopathies that are documented by electromyogram."

4. No electromyogram documents radiculopathies or herniated disks with neurological abnormalities in Zaccione's lumbar, thoracic, or cervical spine. Zaccione's only electromyogram, performed in 2005, found no neurologic abnormality.

5. MRI and CT scans in 2006, 2007, and 2008 detected no disk herniation with neurological abnormalities. Zaccione asserts that an old MRI from 1992 identified a "very minimal" disk herniation at the L5-S-1 region. But the minor herniation was surgically repaired in December 1992 with no recurrence. Zaccione's disability in September 2006 was not caused by the 1992 minimal nonrecurring herniation.

6. Standard properly determined that Zaccione is disabled from his Own Occupation due to symptoms of arthritis and degenerative disk disease, which are Limited Conditions under the Group Policy. Accordingly, judgment should be entered in favor of Standard under Fed. R. Civ. P. 52(a) or alternatively under Fed. R. Civ. P. 56(c)

WHEREFORE, Defendant, STANDARD INSURANCE COMPANY, respectfully requests entry of judgment in its favor, dismissal of the Amended Complaint with prejudice, and an award of its costs and reasonable attorneys' fees pursuant to 29 U.S.C. §1132(g).

Respectfully submitted,

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By: */s/ Warren von Schleicher*
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CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing on the following attorneys:

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